APPENDIX I

CHAPTER 277. RIOTS AND UNLAWFUL ASSEMBLIES.

Sec. 11570. Unlawful assembly defined. Where three or more persons are, of their own authority, assembled together with disturbance, tumult and violence, and striking terror or tending to strike terror into others, such meeting is an unlawful assembly within the meaning of the provisions of this chapter. [P. C. 1869, c. 38, s. 1; R. L. 1925, s. 4342; R. L. 1935, s. 6170.]

Sec. 11571. Riot defined. A riot is where three or more being in unlawful assembly join in doing or actually beginning to do an act, with tumult and violence, and striking terror, or tending to strike terror into others. [P. C. 1869, c. 38, s. 2; R. L. 1925, s. 4343; R. L. 1935, s. 6171.]

Sec. 11572. Menacing demonstrations. Menacing language, or gestures, or show of weapons or other signs or demonstrations tending to excite terror in others, are sufficient violence to characterize an unlawful assembly or riot. [P. C. 1869, c. 38, s. 3; R. L. 1925, s. 1433; R. L. 1935, s. 6172.]

Sec. 11573. Concurrence in intent. Concurrence in an intent of tumult and violence, and in any violent tumultuous act, tending to strike terror into others, is a sufficient joining in intent to constitute a riot, though the parties concerned did not previously concur in intending the act. For example, where persons present at a public performance concur in the intent to disturb the same by tumult and violence, tending to strike terror; or concur in one or more acts of tumult or violence tending to strike terror, done by any of the assembly. [P. C. 1869, c. 38, s. 4; R. L. 1925, s. 4345; R. L. 1935, s. 6173.]

Sec. 11574. Tumult and violence though assembled lawfully. It is not requisite in order to constitute an unlawful assembly or riot, that persons should have come together with a common or unlawful intent, or in any unlawful manner; or that the object of the meeting, or the act done or intended, should of itself be unlawful. The tumult and violence tending to excite terror, characterize the offense, though the persons may have assembled in a lawful manner, and though the object of the meeting, if legally pursued, or the act done or intended, if performed in a proper manner, would be lawful. [P. C. 1869, c. 38, s. 5; R. L. 1925, s. 4346; R. L. 1935, s. 6174.]

Sec. 11575. Promoting or aiding. Persons present at a riot or unlawful assembly, and promoting the same, or aiding, abetting, encouraging or countenancing the parties concerned therein by words, signs, acts or otherwise, are themselves parties thereto and principles therein. [P. C. 1869, c. 38, s. 6; R. L. 1925, s. 4347; R. L. 1935, s. 6175.]

Sec. 11576. Remaining after order to disperse. In case of an unlawful assembly being by proclamation or otherwise ordered to disperse by any one having legal authority to disperse the same, any one voluntarily remaining in the assembly after notice of the order, except for keeping the peace, is thereby a party concerned in the unlawful assembly. [P. C. 1869, c. 38, s. 7; R. L. 1925, s. 4348; R. L. 1935, s. 6176.]

Sec. 11577. Notice of order presumed. Every person present in an unlawful assembly is presumed to have notice of an order given by lawful authority in lawful manner for the same to disperse. [P. C. 1869, c. 38, s. 8; R. L. 1925, s. 4349; R. L. 1935, s. 6177.]

Sec. 11578. Penalty where object is injury of house, etc. Whoever is guilty of a riot or unlawful assembly, having for its object the destruction or injury of any house, building, bridge, wharf, or other erection or structure; or the destruc-

tion or injury of any ship or vessel, or the furniture, apparel or cargo thereof, shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding five hundred dollars; and shall also be answerable to any person injured to the full amount of his damage. [P. C. 1869, c. 38, s. 9; R. L. 1925, s. 4350; R. L. 1935, s. 6172.]

Sec. 11579. Penalty where persons are endangered. Whoever is guilty of being a party concerned in a riot or unlawful assembly endangering the life, limb, health or liberty of any person, or in any other riot or unlawful assembly, not of the description designated in section 11572, shall be punished by a fine not exceeding one thousand dollars or by imprisonment at hard labor for not more than twenty years. [P. C. 1869, c. 38, s. 10; R. L. 1925, s. 4351; am. L. 1929, c. 4, s. 1; R. L. 1935, s. 6179.]

Sec. 11580. Riot, unlawful assembly. If upon the trial of any person for being concerned in a riot or unlawful assembly as described in section 11579, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any offense mentioned in section 11578, then the jury may return as their verdict that he is not guilty of the offense charged, but is guilty of such offense, and he may be punished accordingly. [L. 1876, c. 40, s. 59; R. L. 1925, s. 4090; R. L. 1935, s. 6180.]

Sec. 11581. By officers. In case of any riot or unlawful assembly in any town, village or district, it shall be the duty of every district magistrate there resident, and also of the high sheriff, sheriff, and his deputies, and of the chief of police for the town, village or district to go among the persons so assembled, or as near to them as may be with safety, and in the name of the Territory to command all the persons so assembled immediately and peaceably to disperse; and if the persons shall not thereupon so disperse, it shall be the duty of each of the officers to command the assistance of all per-

sons present, in seizing, arresting and securing in custody the persons so unlawfully assembled, so that they may be proceeded with for their offense according to law. [P. C. 1869, c. 38, s. 11; R. L. 1925, s. 4352; R. L. 1935, s. 618.]

Sec. 11582. Posse comitatus. If any persons riotously or unlawfully assembled, who have been commanded to disperse by the high sheriff, sheriff, deputy sheriff, chief of police, or district magistrate, shall refuse or neglect to disperse without unnecessary delay, any two of the officers may require the aid of a sufficient number of persons in arms, or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be expedient forthwith to disperse and suppress the unlawful, riotous, or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law. [P. C. 1869, c. 38, s. 12; R. L. 1925, s. 4353; R. L. 1935, s. 6182.]

Sec. 11583. Orders to. Whenever an armed force shall be called out for the purpose of suppressing any tumult or riot or unlawful assembly, or to disperse any body of riotous men, the armed force shall obey such orders for suppressing the riot or tumult or for dispersing and arresting the persons who are committing any of the said offenses, as they may receive from the high sheriff, sheriff, or chief of police, and also such further orders as they may receive after they shall arrive at the place of the unlawful, riotous or tumultuous assembly, as may be given by any two of the magistrates or officers mentioned in the preceding section. [P. C. 1869, c. 38, s. 13; R. L. 1925, s. 4354; R. L. 1935, s. 6183.]

Sec. 11584. Persons killed or wounded. If by reason of the efforts made by any two or more such magistrates or officers, or by their direction, to disperse the unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse,

any such person or any other person then present, as spectators or otherwise, shall be killed or wounded, the magistrates and officers and all persons acting by their order or under their direction shall be held guiltless and justified by law, and if any of the magistrates or officers, or any person acting under their authority or by their direction shall be killed or wounded, all the persons so at the time unlawfully, riotously or tumultuously assembled, and all other persons who, when commanded or required, shall have refused to aid and assist the magistrates or officers, shall be held answerable therefor. [P. C. 1869, c. 38, s. 14; R. L. 1925, s. 4355; R. L. 1935, s. 6184.]

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APPENDIX II

CHAPTER 243. CONSPIRACY.

Sec. 11120. Defined; examples. A conspiracy is a malicious or fraudulent combination or mutual undertaking or concerting together of two or more, to commit any offense or instigate any one thereto, or charge any one therewith; or to do what plainly and directly tends to excite or occasion offense, or what is obviously and directly wrongfully injurious to another:

For instance—A confederacy to commit murder, robbery, theft, burglary or any other offense prohibited by law; to prevent, obstruct, defeat or pervert the course of justice, by suborning a witness, tampering with jurors, or the like offenses; to groundlessly accuse any one of, and cause him to be prosecuted for, an offense; to charge any one with an offense, with the intent and for the purpose of extorting money from him; to falsely charge one with being the father of an illegitimate child; to cheat another by means of false tokens and pretenses; to manufacture a spurious article for the purpose of defrauding whomsoever the same can be sold to; to destroy a will and thereby prejudice the devisees; to prevent another, by indirect and sinister means, from exercising his trade, and to impoverish him; to establish, manage or conduct a trust or monopoly in the purchase or sale of any commodity. [P. C. 1869, c. 28, s. 1; am. L. 1892, c. 102, s. 1; R. L. 1925, s. 4331; R. L. 1935, s. 5720.]

Sec. 11121. Joining in after formation. Any person knowingly acceding to and joining in a conspiracy after the same is formed, is a party thereto, no less than the one who originally takes part in forming the same. [P. C. 1869, c. 28, s. 2; R. L. 1925, s. 4332; R. L. 1935, s. 5721.]

Sec. 11122. Act in pursuance of, unnecessary. It is not requisite that the act agreed upon should be done or at-

tempted in pursuance of the conspiracy; the conspiracy itself constitutes the offense. [P. C. 1869, c. 28, s. 3; R. L. 1925, s. 4333; R. L. 1935, s. 5722.]

Sec. 11123. Act of any is that of all. The act of each party to a conspiracy, in pursuance thereof, is the act of all. [P. C. 1869, c. 28, s. 4; R. L. 1925, s. 4334; R. L. 1935, s. 5723.]

Sec. 11124. Husband and wife. Husband and wife cannot by themselves, without others, be guilty of a conspiracy, and the acts or confessions of either are not evidence against the other in a prosecution for conspiracy. [P. C. 1869, c. 28, s. 5; R. L. 1925, s. 4335; R. L. 1935, s. 5724.]

PROCEDURE

Sec. 11125. Trial joint or several. Conspirators may be tried jointly or severally. But to prevent oppression by joining parties, and thus depriving some of the testimony of others, it is provided that in the trial of any one for a conspiracy, another, charged as a co-conspirator, may be a witness, and in such case the two may be separately tried, though joined in the indictment. [P. C. 1869, c. 28, s. 6; R. L. 1925, S. 4336; R. L. 1935, s. 5725.]

Sec. 11126. Conspiracy and offense both not punishable. Where one is convicted of any offense, he is not liable thereafter to be tried for or convicted of a conspiracy to commit the same; and if a conspiracy to commit an offense and the commission of the same be charged in the same indictment, the defendant is liable to be sentenced for one only. [P. C. 1869, c. 28, s. 7; R. L. 1925, s. 4337; R. L. 1935, s. 5726.]

Sec. 11127. Trivial offense. On a prosecution for conspiracy, if the jury find, or the magistrate having jurisdiction of the fact consider, the offense to be trivial, the defendants shall be discharged, with or without costs, in the discretion of the court. [P. C. 1869, c. 28, s. 8; R. L. 1925, s. 4338; R. L. 1935, s. 5727.]

DEGREES, PENALTIES

Sec. 11128. First degree. Conspiracy to commit, or to instigate to the commission of a felony; or to charge any one with felony; or to prevent, obstruct, defeat, or pervert the course of justice; or to forge or counterfeit or cheat to an amount exceeding one hundred dollars, is in the first degree, and shall be punished by imprisonment at hard labor not more than ten years, or by fine not exceeding ten thousand dollars. [P. C. 1869, c. 28, s. 9; R. L. 1925, s. 4339; R. L. 1935, s. 5728; am. L. 1935, c. 99, s. 1]

Sec. 11129. Second degree. A conspiracy to establish, create, manage or conduct a trust or monopoly in the purchase or sale of any commodity is in the second degree, and shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding one thousand dollars. [P. C. 1869, c. 28, s. 10; am. L. 1892, c. 102, s. 2; R. L. 1925, s. 4340; R. L. 1935, s. 5729; am. L. 1935, c. 99, s. 2.]

Sec. 11130. Third degree. Conspiracy not appearing to be in the first or second degree, is in the third degree, and shall be punished by imprisonment of not exceeding one year and by fine not exceeding four hundred dollars. [L. 1892, c. 102, s. 3; R. L. 1925, s. 4341; R. L. 1935, s. 5730.]

APPENDIX III

1. RACIAL COMPOSITION OF JURY BASED ON CENSUS CLASSIFICATION.

The proof adduced by petitioners that from the standpoint of race, the 1947 grand jury is not a cross-section of the population of Maui County, and therefore violates clearly enumerated principles laid down by this Court, is summarized in tabular form in a chart submitted to the court during oral orgument. This summary is based upon the United States census classification of race. It shows:

Percentage Comparison, Race of Population of Maui County[1] and of Grand Jury List, 1947, Maui County

NATIONALITY		Percentage of Population of Maui County	Percentage of 1947 Grand Jury Panel
Japanese	24,183	43.2%	14%
Filipino	10,509	18.8%	0%
Part Hawaiian	7,915	14.1%	24%
Caucasian	6,989	12.5%	54%
Hawaiian	2,946	5.3%	0%
Chinese	1,513	2.7%	8%
Other Races (Korean, Puerto Rican)	1,925	3.4%	0%

The record shows that the petitioners offered to prove before Judge Cristy, but were not permitted to prove, that if selected at random from qualified persons in order to secure a cross-section, a grand jury of this racial composition would not occur in Maui County more than once in ten million times.

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[1] Census classification of Race of Population of Maui County. 1940 Population—55,980. Dept. of Health, Bureau of Health (Vital) Statistics, T. H., show little change in racial characteristics, 1940 to 1946. Population, estimated as of July 1, 1946—55,904.

2. COMPOSITION OF 1947 MAUI GRAND JURY BASED ON ACCEPTED ISLAND CLASSIFICATIONS.

Percentage Comparison of "Nationality" of Population of Maui County, 1940, and of Persons on the 1947 Grand Jury Panel, Maui County[2] "Nationalities" Roughly Ranked as to Socio-Economic Status

NATIONALITY	Percentage of Population	Percentage on Grand Jury
Haole	3.6%	42.0%
Portuguese	8.8%	12.0%
Caucasian-Hawaiian	7.4%	20.0%
Other Part-Hawaiian	6.8%	4.0%
Chinese	2.7%	8.0%
Japanese	43.2%	14.0%
Korean	1.4%	0
Hawaiian	5.3%	0
Puerto Rican	1.9%	0
Filipino	18.8%	0

[2] Number of Haoles ("Other Caucasians"), Portuguese (including Spaniards), Caucasian-Hawaiians and other Part-Hawaiians, Koreans and Puerto Ricans obtained by carrying forward the 1930 proportions of these categories.

3. ANALYSIS OF GRAND JURY BASED ON UNITED STATES CENSUS CLASSIFICATION OF OCCUPATIONS.

Percentage Comparison, Socio-Economic Classes, Gainfully Employed Persons of Maui County, 1940, and Grand Jury List, Maui County, 1947[a]

SOCIO-ECONOMIC CLASSES	Percentage of Population	Percentage of Panel
Proprietors and Managers (Important firms and/or large branches)	0.6%	24.0%
Other Proprietors, Managers, officials and foremen	4.9%	40.0%
Professional and Semi-professional	3.2%	8.0%
Farm Foremen	2.5%	0
Farmers	2.5%	4.0%
Clerical, sales, etc.	6.4%	12.0%
Craftsmen and Operatives	18.1%	6.0%
Laborers, Non-Farm	9.9%	2.0%
Farm Laborers	47.1%	0
Service Workers	4.7%	0
Occupation Not Specified	0.3%	4.0%

[a] Adapted from Table 3, with certain classes combined and/or divided; Grand Jury data corrected.

4. COMPARISON OF THE OCCUPATIONAL CLASSIFICATION OF THE BLUE-RIBBON JURY IN THE FAY CASE WITH THE 1947 MAUI COUNTY JURY.

	Percentage of total experienced labor forces		Percentage of representation	
	Manhattan	Maui County	"blue ribbon" panel	Maui County
Professional and semi-professional	12.1	3.2	18.8	8
Proprietors, managers and officials	9.3	5.6	43	64
Clerical, sales and kindred workers	21.3	6.4	38	12
Craftsmen, foremen and kindred workers	7.7	20.16	0.2	6
Operatives and kindred workers	17		0	
Service workers	27.6	4.7	0	0
Laborers	4.9	57	0	2
Farmers	0.1	2.5	0	4
Not specified		.3		4

In the blue-ribbon jury, 99.8% were picked from groups representing 42.7% of Manhattan's population. In Maui County Grand Jury, 84% of the jury were picked from groups representing 15% of the population.

Even in the majority opinion in the *Fay* case, the court recognized that the exclusion of workers in a case growing out of a labor dispute might present a different problem. Here unlike in the *Fay* case, the petitioners are farm laborers who are excluded totally from the jury.

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OCT 8 1951
CHARLES ELMORE CROPLEY
CLERK

No. 245

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a Voluntary Unincorporated Association and Labor Union, et al.,
Petitioners,

vs.

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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